IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.282 of 2003

Reserved on 11.10.2007

Date of decision 8.11.2007

H.P. Housing Board Petitioner

Vs.

Naresh Kumar and others Respondents

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Petitioner: Mr.Bhupender Gupta, Senior Advocate, with Mr.Parneet Gupta and Mr.J.R.Thakur, Advocates.

For the respondents: Mr.M.L.Sharma, Advocate, for respondents No.1 and 2.

Mr.B.S.Kanwar, Advocate, for respondents No.3(a) to 3(d) and 4(a) to 4(c).

Mr.M.S.Chandel, Advocate General, with Mr.M.A.Khan and Ms.Meenakshi Sharma, Deputy Advocate Generals, for respondents No.5 and 6.

Rajiv Sharma, J.

A challenge has been laid to the order dated 12.6.2002 passed by the learned Land Acquisition Collector (Rural), Shimla in case No.6/95.

The brief facts necessary for the adjudication of this petition are that the State of Himachal Pradesh had issued Notification under Section 4 of the Land Acquisition Act on 27.7.1988 for the acquisition of track of land for construction of residential housing colony. The total notified land

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[1] Whether reporter of local papers is allowed to see the judgment? No.

acquired by the State of Himachal Pradesh was 153.02 bighas. The land measuring 5.02 bighas owned by respondents No.1 to 4 was also included therein. The Land Acquisition Collector made an award on 1.11.1990 and awarded compensation at different rates. One Smt.Mathi Devi preferred reference under Section 18 of the Land Acquisition Act, 1894 seeking enhancement of compensation. The learned Additional District Judge vide his common award dated 28.8.1995 had assessed the market value of the land at Rs.1,22,500/- per bigha. The respondents No.1 to 4 filed petition under Section 28-A of the Land Acquisition Act for re-determination of the compensation on the basis of the Award dated 28.8.1995 made in Smt.Mathi Devi's case. The Land Acquisition Collector(Rural), Shimla vide order dated 12.6.2002 awarded a sum of Rs.12,53,666/- to the respondents No.1 to 4.

Mr.Bhupender Gupta, learned Senior Counsel with Mr.Parneet Gupta, Advocate appearing for the petitioner, had strenuously argued that the order dated 12.6.2002 is not sustainable in the eyes of law to the extent whereby the Land Acquisition Collector (Rural), Shimla had awarded simple interest at the rate of 5% on the principal amount and interest at the rate of 8% for every day of delayed payment. Mr.M.L.Sharma, Mr.B.S.Kanwar and Mr.M.S.Chandel, learned Advocate General, appearing for respondents had supported the order dated 12.6.2002.

I have heard the learned counsel for the parties and have perused the record of the case carefully.

It is evident from the contents of the Award dated 28.8.1995 passed by the learned Additional District Judge, Shimla in the case of Smt.Mathi alias Smt Darshanoo vs. State of H.P. and others that he had awarded enhanced compensation of Rs.1,22,500 per bigha after deducting 30% for all kind of developments. Thereafter he had awarded interest at the rate of

12% p.a. on the enhanced amount of compensation from the date of publication of notification under Section 4 of the Land Acquisition Act i.e. 27.7.1988 till the date of taking over the possession of the acquired land whichever was earlier. In addition to it, the claimants were also held entitled to the interest at the rate of 9% p.a. with effect from the date of taking of possession of the acquired land with one year and thereafter at the rate of 15% p.a. till the enhanced amount was paid or deposited in the court.

On the basis of the pleadings of the parties as well as on the basis of the calculations which have been made as per provisions of the Land Acquisition Act, 1894, the respondents No.1 to 4 are only entitled to a sum of Rs.6,61,600.00 for the acquisition of the land measuring 5.08 bighas at the rate of Rs.1,22,500.00 per bighas. This figure has been arrived at by giving opportunity to the parties to place on record the correct calculations strictly as per the provisions of the Land Acquisition Act as well as on the basis of the observations made by the learned Addl. District Judge in his award dated 28.8.1995.

The respondents No.1 to 4 are only entitled to the compensation as awarded by the learned Additional District Judge in his award dated 28.8.1995. In the present case the learned Land Acquisition Collector(Rural), Shimla had awarded 5% simple interest to be given on the principal amount over and above the statutory amount to which the claimants are entitled. Besides this he had awarded interest at the rate of 8% for every day of delayed payments. The awarding of simple interest at the rate of 5% p.a. as well as interest at the rate of 8% p.a. is not stipulated under the Scheme of Land Acquisition Act, 1894. The Land Acquisition Collector could not award any compensation beyond the amounts awarded by the Addl. District Judge on 28.8.1995 and also in breach of the mandatory provisions of the Land Acquisition Act, 1894.

Consequently awarding of 5% and 8% interest as ordered by the Land Acquisition Collector in his order dated 12.6.2002 is liable to be set aside being contrary to law. Accordingly, the writ petition is partly allowed and the simple interest at the rate of 5% as awarded by the Land Acquisition Collector as well as 8% on delayed payments is set aside. The rest of the order dated 12.6.2002 being in conformity with law is upheld. There shall however be not any order to costs.

November 8, 2007 (g) **(Rajiv Sharma), J.**